

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE  
SUBSTANTIAL DEVELOPMENT PERMIT  
ISSUED BY THE CITY OF PORT  
ANGELES TO CROWN ZELLERBACH  
CORPORATION,

PACIFIC NORTHERN OIL,

Appellant,

v.

THE CITY OF PORT ANGELES,  
STATE OF WASHINGTON,  
DEPARTMENT OF ECOLOGY, and  
CROWN ZELLERBACH CORPORATION,

Respondents.

SHB No. 83-20

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW AND  
ORDER

This matter, the request for review of a shoreline substantial development permit issued by the City of Port Angeles to Crown Zellerbach Corporation, came before the Shorelines Hearings Board, Gayle Rothrock, Chairman, David Akana (presiding), Larry Faulk, Rodney Kerslake, Nancy Burnett, and Beryl Robison, Members, on June 14, 15, and 16, 1983, in Lacey, Washington.

1 Appellant Pacific Northern Oil appeared through its attorneys  
2 Jay P. Derr and Joel M. Gordon; respondent City of Port Angeles was  
3 represented by City Attorney Craig Miller; respondent Department of  
4 Ecology was represented by Assistant Attorney General Patricia Hickey  
5 O'Brien; respondents Crown Zellerbach Corporation and BP North America  
6 Trading Inc., were represented by their attorneys Richard R. Wilson  
7 and Sally H. Clarke.

8 Having heard the testimony, having examined the exhibits, having  
9 heard the arguments of counsel, having reviewed the hearing briefs  
10 submitted by the parties, and being duly advised, the Shorelines  
11 Hearings Board makes the following:

12 FINDINGS OF FACT

13 I

14 Respondent BP North America Trading Inc., ("BPNAT") presently  
15 engages in the business of supplying fuel oil to ships in Port Angeles  
16 Harbor by barge from other Puget Sound locations ("bunkering").  
17 Appellant Pacific Northern Oil also engages in the bunkering business  
18 in Port Angeles Harbor. BPNAT proposes to enter into a long-term  
19 ground sublease with respondent Crown Zellerbach Corporation of the  
20 existing tank farm facility located at the Crown Zellerbach mill on  
21 Ediz Hook in Port Angeles. The facility would be redeveloped as  
22 depicted on the site plan which is part of the substantial development  
23 permit at issue. The existing facility is currently used by Crown  
24 Zellerbach to store fuel oil for its own use in operating the mill.

1 II

2 Under the subleasing arrangement, the storage capacity of the  
3 Crown Zellerbach tank farm facility will be increased from 74,300 bbl  
4 to 150,400 bbl. The types of fuel oil to be stored will be blended  
5 Bunker "C" and Cutter, Marine Diesel, and Diesel #2, all NFPA Class  
6 III A Combustibles, with a flash point of 150° F to 240° F and a  
7 fire point of approximately 300° F.

8 Tankers now visit the mill about two to three times per year.  
9 Under the proposed new operation, tankers would visit the storage  
10 facility about 72 times per year. .

11 III

12 BPNAT will demolish two of the five existing fuel tanks, relocate  
13 the other three, construct and install two new tanks and related  
14 piping, and upgrade the existing wharf and trestle as described in  
15 Crown Zellerbach's Shoreline Substantial Development Permit  
16 application to the City of Port Angeles.

17 IV

18 Thereafter, BPNAT will conduct its bunkering operations in Port  
19 Angeles Harbor from the upgraded Crown Zellerbach tank farm facility  
20 and will also supply fuel oil for Crown Zellerbach's own use in the  
21 mill. Some increase in the number of ships bunkering in Port Angeles  
22 Harbor may occur. The upgrading of the tank farm facility will  
23 eliminate the necessity for BPNAT to barge fuel oil from other Puget  
24 Sound locations for its bunkering operations in Port Angeles. The  
25 number of oil transfers to fuel barges could be as many as 360 per

1 year. The risk of an oil spill is greatest during transfer. The  
2 increasing numbers of transfers may increase the risk of an oil  
3 spill. However, the impact of a spill was not shown to be significant.

#### 4 V

5 The project site is located adjacent to the Crown Zellerbach mill  
6 on Ediz Hook in the City of Port Angeles on a shoreline that  
7 previously was significantly altered by man. The property is zoned  
8 Industrial ("M-2") and is within the Urban environment of the Clallam  
9 County Shoreline Master Program ("CCSMP") as adopted by the City of  
10 Port Angeles. The site is also designated as a shoreline of statewide  
11 significance pursuant to RCW 90.58.030(2)(e).

#### 12 VI

13 On November 23, 1982, Crown Zellerbach applied to the City of Port  
14 Angeles for a Shoreline Substantial Development Permit ("Shoreline  
15 Permit"). In connection with the project, an environmental checklist  
16 and detailed supplementary information regarding the nature of the  
17 project, the role of BPNAT, historical fuel oil demand, oil spill  
18 data, emissions calculations, and vessel traffic regulations, together  
19 with permit applications to the Olympic Air Pollution Control  
20 Authority and the Army Corps of Engineers were filed. These documents  
21 constituted the Shoreline Permit Application to the City of Port  
22 Angeles and amounted to 149 pages of information regarding the project.

#### 23 VII

24 On November 24, 1982, the Planning Director for the City of Port  
25 Angeles forwarded a copy of the entire Shoreline Permit Application to

1 the State of Washington, Department of Ecology ("DOE") which was the  
2 lead agency for the proposal under WAC 197-10-230(10).

3 VIII

4 DOE reviewed and considered comment letters from four citizens and  
5 the City of Port Angeles regarding the proposal and, in one case,  
6 requested Crown Zellerbach to respond to the issues raised. On  
7 December 23, 1982, Crown Zellerbach filed a detailed response to the  
8 issues raised. A member of the DOE staff who is an expert in fuel oil  
9 tank farm facilities conducted a site visit while another staff member  
10 who is an expert in air pollution control independently verified the  
11 air pollution data submitted with the Shoreline Permit Application.

12 IX

13 On January 10, 1983, DOE issued a "Proposed Declaration of  
14 Non-Significance" under the State Environmental Policy Act ("SEPA"),  
15 RCW Ch. 43.21C. The Proposed DNS and the Environmental Checklist were  
16 sent to other agencies with jurisdiction pursuant to WAC  
17 197-10-340(4). Neither the City of Port Angeles nor any other agency  
18 expressed any opposition to the proposed DNS during the 15-day period  
19 specified in WAC 197-10-340(5), and DOE accordingly entered a Final  
20 Declaration of Non-Significance on February 9, 1983.

21 X

22 After a detailed study, the City of Port Angeles Planning  
23 Department issued its staff report on the project on March 4, 1983,  
24 recommending approval subject to six conditions. Following two public  
25 hearings, the City Planning Commission recommended approval of the

26 FINAL FINDINGS OF FACT,  
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1 Shoreline Permit subject to the six conditions proposed by the  
2 Planning Department, with one minor revision.

3 On March 15, 1983, the City Council held a public hearing on the  
4 Shoreline Permit Application. There were no questions or comments  
5 from the audience, and the City Council voted to concur with the  
6 recommendation of the Planning Commission and approve Crown  
7 Zellerbach's Shoreline Permit subject to the six conditions  
8 recommended by the Planning Commission. The approved permit was  
9 received by DOE on March 23, 1983.

10 . XI

11 On April 21, 1983, appellant Pacific Northern Oil, filed its  
12 Request for Review of both the City's action in issuing the Shoreline  
13 Permit and DOE's issuance of a Declaration of Non-Significance for the  
14 project. Respondent BPNAT, as the prospective operator of the tank  
15 farm and bunkering facility, then intervened in this action.

16 XII

17 The proposed tank farm and bunkering facility has been designed as  
18 a "state of the art" facility to minimize the risk of oil spills and  
19 other risks to the environment.

20 XIII

21 In light of mitigating measures incorporated into the design and  
22 operation of the facility, there will be no significant increase in  
23 the risk of oil spills in connection with the proposed project.

24 XIV

25 It was not shown that the facility and its operation would present

1 a significant increase in the risk of fire and explosion.

2 XV

3 The increase in emissions from the facility will not have more  
4 than a moderate effect upon air quality in the Port Angeles area.

5 XVI

6 Although there will be some increase in harbor traffic, the  
7 projected increase will have no more than a moderate effect upon  
8 vessel traffic movements in Port Angeles Harbor.

9 XVII

10 Any Conclusion of Law which should be deemed a Finding of Fact is  
11 hereby adopted as such.

12 From these Findings, the Shorelines Hearings Board comes to these

13 CONCLUSIONS OF LAW

14 I

15 In any request for review of the issuance of a Shoreline Permit,  
16 the appellant has the burden of proving that issuance of the Shoreline  
17 Permit was inconsistent with the Shoreline Management Act, RCW ch.  
18 90.58 ("SMA"), the CCSMP, and SEPA. WAC 461-08-175(a) and (c).

19 II

20 Appellant alleges that the proposed project is inconsistent with  
21 the policies of the SMA. Appellant did not prove such inconsistency.

22 III

23 Appellant also alleges that the proposed project is inconsistent  
24 with the CCSMP. Appellant offered no persuasive evidence to support  
25 its allegation nor has it proved such inconsistency. Reference in the

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
SHB No. 83-20

1 CCSMP to facilities defined in RCW 80.50.020 are subject to the  
2 provisions of chapter 80.50 RCW.

3 IV

4 Appellant further alleges that DOE failed to comply with the  
5 policies and procedures of SEPA in issuing its Declaration of  
6 Non-Significance for the project. The Department of Ecology was the  
7 lead agency for this project pursuant to WAC 197-10-230(10). Under  
8 the supreme court's rule, "to reach a valid negative threshold  
9 determination, environmental factors must have been evaluated to such  
10 an extent as to constitute prima facie compliance with SEPA procedural  
11 requirements." Hayden v. City of Port Townsend, 93 Wn. 2d 870, 880,  
12 613 P.2d 1164 (1980).

13 V

14 In reviewing a threshold determination, "the decision of the  
15 governmental agency shall be accorded substantial weight." RCW  
16 43.21C.090. That decision can be overturned only if it was "clearly  
17 erroneous." Brown v. City of Tacoma, 30 Wn. App. 762, 764, 637 P.2d  
18 1005 (1981), quoting Hayden, supra, 93 Wn.2d at 880. Appellant  
19 therefore must show that, upon a review of the entire record, the  
20 Board will be left with a definite and firm conviction that a mistake  
21 has been made. Appellant has failed to so persuade the Board.

22 VI

23 DOE's file on this project includes the 149-page Shoreline Permit  
24 Application, Environmental Checklist, and supporting data and  
25 information submitted by Crown Zellerbach. The testimony before the



1 Board and the Department's file on this project establish that DOE  
2 followed the procedures outlined in the SEPA guidelines. WAC ch.  
3 197-10.

#### 4 VII

5 The Environmental Checklist and related documents in the DOE file  
6 contain facts and information in support of the negative threshold  
7 determination and provided the public with an opportunity to  
8 understand and consider the Department's decision. The file indicates  
9 that DOE actually considered the environmental factors at issue before  
10 making its negative threshold determination. Based upon the record,  
11 it is evident that DOE went beyond minimal compliance with SEPA  
12 procedures. It is further evident, based upon that record, that the  
13 responsible official properly concluded that the proposed project will  
14 not have more than a moderate impact on the environment. Accordingly,  
15 we affirm DOE's negative threshold determination and conclude that DOE  
16 and the City of Port Angeles have complied with SEPA in this case.

#### 17 VIII

18 Respondents Crown Zellerbach and BPNAT have urged the Board to  
19 conclude alternatively that appellant Pacific Northern Oil lacks  
20 standing under SEPA to appeal DOE's negative threshold determination.  
21 We note that appellant's request for review was certified by DOE and  
22 the Attorney General. The certification established prima facie  
23 standing, if nothing else.

IX

We have carefully considered the other contentions of appellant and find them to be without merit.

X

Any Finding of Fact which should be deemed a Conclusion of Law is hereby adopted as such.

From these Conclusions the Board enters this

ORDER

The shoreline substantial development permit issued by the City of Port Angeles to Crown Zellerbach in this matter is hereby affirmed.

DONE at Lacey, Washington, this 22<sup>d</sup> day of July, 1983.

SHORELINES HEARINGS BOARD

*David Akana*

DAVID AKANA, Lawyer Member

*Gayle Rothrock*

GAYLE ROTHROCK, Chairman

*Larry Faulk*

LARRY FAULK, Member

*Rodney Kerlake*

RODNEY KERSLAKE, Member

*Nancy Burnett*

NANCY BURNETT, Member

*Beryl Robison*

BERYL ROBISON, Member

BEFORE THE  
SHORELINES HEARINGS BOARD  
STATE OF WASHINGTON

IN THE MATTER OF A SHORELINE  
SUBSTANTIAL DEVELOPMENT PERMIT  
DENIED BY SAN JUAN COUNTY  
TO ERNEST A. MERLINO,

Appellant,

v.

SAN JUAN COUNTY,

Respondent.

SHB No. -83-20

FINAL FINDINGS OF FACT,  
CONCLUSIONS OF LAW  
AND ORDER

This matter, the request for review of the denial of shoreline substantial development permit application number 03 SJ 83 by San Juan County, came before the Shorelines Hearings Board, David Akana (presiding), Gayle Rothrock, Nancy R. Burnett, Lawrence J. Faulk and Dennis Gregoire, at a hearing in Eastsound, on September 26, 1983.

Appellant was represented by his attorney, Randy M. Boyer; respondent was represented by Gene Knapp, Prosecuting Attorney. Court reporter Betty Koharski recorded the proceedings.

1 Having heard the testimony, having examined the exhibits, and  
2 having considered the contentions of the parties, the Board makes these

3 FINDINGS OF FACT

4 I

5 This matter involves the proposed construction of a private dock  
6 on lot 2 of the Avilion Short Plat on Orcas Island in San Juan  
7 County. The lot is situated on the southeast portion of Orcas Island  
8 next to Obstruction Pass, a shoreline of statewide significance. The  
9 proposed dock would extend in a southerly direction from the lot.

10 II

11 On January 26, 1983, appellant applied for a substantial  
12 development permit to build a dock to serve the three waterfront lots  
13 and one upland lot of the Avilion Short Plat. The proposed dock would  
14 be built on the eastern edge of lot 2 and would consist of a 92 foot  
15 by 6 foot pier, a 40 foot by 4 foot ramp, and a 50 foot by 8 foot  
16 float. As proposed, access to the dock would be over a driveway  
17 extending from the plat road to the dock.

18 A declaration of non-significance was issued by the county  
19 planning department.

20 III

21 On June 7, 1983, a decision denying the application for a  
22 substantial development permit was issued by the County  
23 Commissioners. On July 5, 1983, appellant filed a Request for Review  
24 by this Board.

25  
26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
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IV

The proposed substantial development is a "joint use" dock to serve lots 1 through 4 of Avillion Short Plat. Provisions to use the proposed dock could be made to benefit any lot in a future subdivision of the property in the short plat. Owners of properties adjacent to the short plat either could not or did not want to participate in the joint construction and use of the dock.

V

Appellant intends to acquire a 27 to 30 foot long boat if the proposed dock is approved. The owner of lot 2 would also consider purchasing a larger boat should the proposed dock materialize.

VI

The view of the dock from the short plat will not offend the aesthetic senses of the short plat lot owners. They believe that such a dock would not detract from the rural character of the shoreline.

VII

The dock as viewed from locations other than the short plat would be more noticeable. It would be fully visible from boat traffic travelling through Obstruction Pass, or traveling to the east of the pass. If constructed, it would be the only large dock at the eastern portion of the pass. The length (180 feet), height above water (17.5 feet maximum), and overall scale of the proposed dock would impart an intrusive presence along the shoreline. In relation to the pass, other existing docks are not as obtrusive.

VIII

The county dock, located in the middle of the shore on Obstruction pass, provides an adequate and feasible dock facility for users in the pass. In combination with mooring buoys, the dock can provide reasonable access to and from the water when not crowded. The dock is about 5 minutes drive from appellant's house, and about 1000 feet from appellant's property along the shoreline.

IX

Three private docks in the pass are situated to the west of the county dock. These docks differ from the proposed dock by location and by situation. These docks were also built at different times. The westernmost dock is a joint use dock shared by four owners. Moorage may be available to rent in the future at one of the docks, which was the moorage for a former resort. Appellant is under the impression that the owner of the facility prefers to rent to transient rather than permanent users.

X

The proposed dock was designed to accommodate the boating needs of the lot owners and their guests. With the proposed use in mind, the 180 foot dock was designed to reach to the desired depth with a length which was as short as possible. It is feasible to construct a dock of the same length which is lower in elevation and somewhat smaller in scale. The proposed dock can serve a 50 foot long boat owned by a relative of appellant who may visit on occasion.

1  
2 Even though the current can be swift in the pass, mooring buoys  
3 have been the traditional means of boat moorage in Obstruction Pass.  
4 Boats using the buoys have been of the smaller variety in terms of  
5 length and weight. Most of the buoys are located near the shore at  
6 the midmost point of the pass where the beach is of gradually sloping  
7 sand. Appellant's mooring buoy, which was installed about 4 years ago  
8 when he purchased the property, is the easternmost mooring buoy in the  
9 pass. Appellant believed that the buoy was capable of mooring a 50  
10 foot boat in the anticipated current in the pass. This belief has  
11 since been dispelled.

12 Appellant and other proposed joint dock users desire a dock to  
13 provide themselves easy access to their boats. They find it hard on  
14 older persons, such as themselves, to launch and to recover their  
15 trailerable boats. They also find it difficult to use mooring buoys.  
16 Access to the buoy from his property is by dinghy over a gradually  
17 sloping, rocky beach. There are some slippery areas which must be  
18 traversed when launching or beaching a dinghy. Although dragging a  
19 dinghy over a rocky beach causes more wear and is more difficult than  
20 it would be over a sandy shore, it is still a practical way to reach  
21 the mooring buoy. In fact, appellant has used such means to reach his  
22 16 foot boat in the past. Mooring buoys are adequate and feasible to  
23 serve appellant's own present and projected needs at lot 1. Mooring  
24 buoys were not shown to be inadequate or unfeasible at lots 2 and 3.  
25

26 FINAL FINDINGS OF FACT,  
27 CONCLUSIONS OF LAW & ORDER  
SHB No. 83-28



1 It was not shown that mooring buoys or other alternate moorage was  
2 inadequate or unfeasible.

3 XII

4 Paragraph 6 of the plat restrictions for the Avillion Short Plat  
5 acknowledges a preference for mooring buoys over docks. In the event  
6 that mooring buoys do not provide reasonable moorage, a joint use dock  
7 application for the benefit of all lot owners in the subdivision may  
8 be accepted by the county. Pedestrian access to the common mooring  
9 area is also required.

10 The shoreline area is wooded and banked for the first 50 to 100  
11 feet and is protected by a building setback line on the short plat.

12 XIII

13 Piers and docks are permitted use activities in the suburban and  
14 rural environments, subject to the policies and regulations of the  
15 SMP. Such uses are also permitted in the aquatic environment under  
16 the same basis and, additionally, to the regulations applicable to the  
17 abutting shoreline area. Section 5.08, pp 33, 34.

18 XIV

19 Section 4.03 of the SMP describes the suburban environment and  
20 sets forth certain management policies. Relevant portions state:

21 Statement of Purpose

22 The purpose of the Suburban Environment is to protect  
23 and enhance existing medium density shoreline  
24 residential areas, to provide for additional areas of  
25 this type and to provide for non-residential uses  
26 which are or can be made compatible with residential  
27 areas, in a manner which will protect the shore  
process corridor and its operating systems.

28 . . . . .

1. The residential character of Suburban Environments should be protected and enhanced by careful regulation of the type, location, scale and timing of new shoreline development.
2. Suburban Environments should be restricted to compatible residential, recreational, home occupational and non-residential uses.
3. Public, physical and visual access to the shoreline should be planned for and provided wherever possible.

• • • •

5. The character and appearance of Suburban shoreline developments, problems of view obstruction and other visual and scenic considerations should be regulated by means of setback controls, sign control ordinances, planned unit development standards and similar regulations. . . .

Section 4.04 of the SMP describes the rural environment and sets certain management policies. Relevant portions state:

The purpose of the Rural Environment is to protect agricultural and timber lands from urban and suburban expansion, to restrict intensive development along undeveloped shorelines and to maintain open spaces and opportunities for recreational and other uses compatible with agricultural activities.

• • • •

1. Areas possessing a high capability to support agricultural or forestry uses should be maintained.
2. The designation of Rural Environments should be used as one means of protecting agricultural and forestry areas from the pressures of urban and suburban development.

1 3. New developments in a Rural Environment should  
2 reflect the character of the surrounding areas by  
3 limiting residential density, by providing permanent  
4 open space and by maintaining adequate building  
5 setbacks from the water to prevent shoreline  
6 resources from being destroyed for other rural types  
7 of uses.

8 4. public and private recreational facilities which  
9 can be located and designed so as to create minimal  
10 conflicts with agriculture and forestry should be  
11 encouraged.

12 . . . . .

13 6. Development which is not agriculture or forestry  
14 related but which is not contrary to the intent of  
15 the Rural Environment should be permitted. . . .

#### 16 XVI

17 Section 4.07 of the SMP describes the aquatic environment and sets  
18 forth certain management policies. Relevant portions state:

##### 19 Statement of Purpose

20 The purpose of the Aquatic Environment is to protect  
21 the quality and quantity of the water, to preserve  
22 the water surfaces and foreshores for shoreline  
23 dependent uses, such as navigation, aquatic habitats  
24 and recreation, and to preserve and ensure the wise  
25 use of the Aquatic area's natural features and  
26 resources, which are substantially different in  
27 character from those of adjoining uplands and  
backshores.

28 . . . . .

##### 29 Management Policies

30 1. Developments within the Aquatic Environment  
31 should be compatible with the adjoining upland  
32 environment.

33 . . . . .

34 3. Structures which are not shoreline dependent  
35 should be prohibited.

1 4. Activities and uses of a permanent nature which  
2 will substantially degrade the existing character of  
3 the area should be prohibited, except in those cases  
4 where the public interest clearly will be better  
5 served by approval of the proposed activity or use.

6 5. All developments and activities using navigable  
7 waters or their beds should be located and designed  
8 to minimize interference with surface navigation, to  
9 minimize adverse visual impacts and to allow for the  
10 safe, unhindered passage of fish and animals,  
11 particularly those whose (sic) life cycles are  
12 dependent on such migration.

13 . . . . .

14 7. The joint use of structures which intrude into  
15 Aquatic areas, such as docks, piers, jetties,  
16 breakwaters, bulkheads, etc., should be encouraged. .  
17 . .

#### 18 XVII

19 The San Juan County Shoreline Master Program, as amended, (SMP)  
20 provides regulations for piers and docks. The regulations express a  
21 preference for multiple use and expansion of existing facilities,  
22 mooring buoys, or moorage floats over new docks and piers. Section  
23 5.08(1, 2 and 3), SMP.

24 Section 5.08(4) of the SMP regulations provides:

25 Applications for non-exempt docks and piers  
26 associated with single-family residences shall not be  
27 approved until:

- 28 a. it can be shown by the applicant that existing  
29 facilities are not adequate or feasible for use;
- 30 b. alternative moorage is not adequate or feasible;
- 31 c. the possibility of a multiple-owner or  
32 multiple-user facility has been thoroughly  
33 investigated.
- 34 d. the applicant shall have the burden of providing  
35 the information requested for items a, b and c above,  
36 and shall provide this information in a manner  
37 prescribed by the Administrator.
- 38 e. Applicants who contemplate shared dock facilities  
39 shall submit a written agreement to be used with the

1 proposed dock users, indicating the terms of multiple  
2 use, the proportion of shared construction costs and  
3 upkeep costs and liability. This will be sent by  
4 certified mail by the applicant to his neighbors with  
his letter of intention and request for information  
on the possibility of joint use; with 30 days for  
response by certified mail.

5 The provision effectively prohibits non-exempt docks and piers  
6 associated with single-family residences unless an applicant meets  
7 items a, b and c.

8 Section 5.08(5) of the SMP regulations provides:

9 Every application for a substantial development  
10 permit for dock or pier construction shall be  
11 evaluated on the basis of multiple considerations,  
12 including but not necessarily limited to the  
13 potential impacts on littoral drift, sand movement,  
water circulation and quality, fish and wildlife,  
navigation, scenic views and public access to the  
shoreline.

#### 14 XVIII

15 Section 6.03 of the SMP provides policies for development on  
16 shorelines of statewide significance. The following policies, in  
17 their order of preference, are at issue:

18 2. The natural character of shorelines of statewide  
significance should be preserved.

19 3. Shorelines of statewide significance should be  
20 used in ways which will produce long term benefits as  
opposed to short term benefits or conveniences.

21 a. Actions that would commit resources to  
22 irreversible uses or would detrimentally alter  
23 natural conditions characteristic of such  
shorelines should be severely limited.

24 b. The short term economic gain or convenience  
25 associated with a proposed development should be  
26 evaluated in relationship to long term and  
potentially costly impairments to the natural  
environment.

1 c. The visual impact of every proposed project  
2 should be thoroughly evaluated and adverse  
impacts should be minimized.

3 4. The natural resources and systems of shorelines  
4 of statewide significance should be protected. Areas  
5 containing unusual or fragile natural resources or  
systems should be left undeveloped.

6 XIX

7 Any Conclusion of Law which should be deemed a Finding of Fact is  
8 hereby adopted as such.

9 From these Findings the Board comes to these

10 CONCLUSIONS OF LAW

11 I

12 The Shoreline Management Act (SMA) provides that a permit shall  
13 issue when the development proposed is consistent with the applicable  
14 master program and the provisions of the SMA. RCW 90.58.140(2)(b).

15 II

16 The proposed substantial development was not shown to be  
17 consistent with the SMP regulations, Section 3.08(2, 4(a), and 4(b)).  
18 Mooring buoys were not shown to be inadequate or unfeasible for the  
19 residential waterfront lots. Mooring buoys were shown to be commonly  
20 used in the pass. The occasional moorage of a large pleasure boat by  
21 visitors does not establish that mooring buoys would be unreasonable  
22 for the residential lot owners. Existing facilities are available at  
23 the county dock to load and unload boats. Commercial moorage for  
24 large visiting boats was not shown to be unavailable, even assuming  
25 that such a showing could establish some basis to allow the proposed  
26 dock.

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III

The proposed substantial development was not shown to be consistent with the SMP policies and regulations set forth in Section 4.03(1, 2 and (5), Section 4.07(4 and 5), Section 5.08(5), and Section 6.03(2 and 3) with respect to adverse visual impacts. As described in the findings, the proposed dock is unreasonably long and unreasonably high at its intended location. The highly visual impact of the proposed dock upon scenic views is detrimental. As proposed, the dock is inconsistent with the above-cited provisions.

IV

The proposed substantial development is not inconsistent with Section 4.04 of the SMP because the proposed development lies within suburban and aquatic environments and not within a rural environment.

V

The proposed substantial development, as submitted to the county, is inconsistent with the SMP and the plat restrictions implementing pertinent provisions of the SMP. The SMP does not guarantee that a dock for any size of boat can be constructed at this particular site. The County Commissioners' suggestion to the applicant contained in their decision at finding no. 12 that mooring buoys and/or a small dock or dinghy dock would be more appropriate to the specific site indicates that mooring buoys may not be practical for all three waterfront lots. If such is the case, a smaller dock in conjunction with mooring buoys seem more appropriate to the site than the proposed

1 dock. The adverse impacts from a smaller dock would be less,  
2 especially where scenic views must be considered.

3 VI

4 The proposed substantial development, being inconsistent with the  
5 SHP, is inconsistent with the provisions of the Shorelines Management  
6 Act.

7 VII

8 The action of the county denying the application for a substantial  
9 development permit should be affirmed.

10 VIII

11 Any Finding of Fact which should be deemed a Conclusion of Law is  
12 hereby adopted as such.

13 From these Conclusions the Board enters this  
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ORDER

The action of San Juan County denying Substantial Development Permit Application Number 03 SJ 83 is affirmed without prejudice to submit a new application.

DATED this 26<sup>th</sup> day of October, 1983.

SHORELINES HEARINGS BOARD

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